**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**FIRST APPEAL No. 2025 of 2007**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE JAYANT PATEL**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**SAVITABEN JIVANBHAI PARMAR WIDOW OF JIVANBHAI K. PARMAR & 2 - Appellant(s)**

**Versus**

**ORIENTAL INSURANCE CO. LTD. & 2 - Defendant(s)**

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**Appearance :**
MR PRABHAKAR UPADYAY for Appellant(s) : 1 - 3.
None for Defendant(s) : 1 - 3.

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**CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL**

**Date : 18/09/2007**

**ORAL JUDGMENT**

1. The short facts of the case are that on 10.06.1993, at about 20.45 hrs, the deceased

Jivanbhai was proceeding towards Dediyapada after completing his duty at Netrang by riding Suzuki motorcycle bearing registration No. GCL 508. At that time, when he reached near Chandarvan Patia, one Hero Honda Motorcycle bearing registration No.Gj-5-P-3688, being driven in rash and negligent manner, dashed with the deceased and the deceased sustained injuries and ultimately, he succumbed to the injuries. The claim petition was filed being MACP No.557/93 before the Tribunal for recovery of the compensation of Rs.9,99,999/-. The Tribunal after adjudication awarded the compensation of Rs. 3,91,400/- with interest @ 12% and 9% for the respective period and it is under these circumstances, the present appeal before this Court for enhancement by the claimant.

2. Heard Mr.Upadhyay, learned counsel for the appellant. Considered the Judgement and Award passed by the Tribunal.

3. The learned counsel for the appellant only contended that the aspects of future promotion and the salary in the cadre of higher post is not considered by the Tribunal while arriving at the figure of the prospective income and it has been submitted that the income assessed by the Tribunal for calculating the dependency benefit is on lower side and therefore, the Tribunal has committed error.

4. The examination of the said contention shows that it is an admitted position that, at the time of accident, salary of the deceased was Rs.2,600/- p.m. The Tribunal has found that had the deceased continued in service in the same scale, the highest salary would have been double and therefore, Rs.5,200/- p.m. Therefore, if the mean is arrived at and the prospective income for the purpose of compensation is calculated at Rs.3,900/-, such an approach on the part of the Tribunal is as per the settled principles for calculating the prospective income.

5. The contention as sought to be canvassed that the deceased would have been promoted in the higher cadre and the salary would have been increased, as such, can be said as on hypothesis because the promotion would not only depend on the seniority, but it would also depend on merits. Further, in a case where the income is proved, the principles of prospective income would be more or less the same by doubling the income and thereafter, mean is to be arrived at. Therefore, it would be roughly 1.5 times, the income proved at the time of accident. If such principles are considered, the approach on the part of the Tribunal cannot be said as unjust or unreasonable.

6. Mr. Upadhyay, learned counsel for the appellant

by relying upon the decision of this Court in the case of Suryaben Harisingbhai Bilwal Vs. Ataullahkhan Mehtabkhan Lalkhan Pathan & Ors. reported at 2001(3) GLR 2029, contended that the revision in the pay-scale including that of the promotion is required to be considered while awarding compensation.

7. In the decision before the Division Bench, it was proved that the person concerned was working as clerk in the office of Mamlatdar, Thasra and he had passed a departmental exam and had he not died, he would have been promoted as Deputy Mamlatdar. There are no fact situation in the present case. Further, it was a case where the Court recorded that as per the Pay Commission report, the pay-scales were revised. Such is also not the fact situation in the present case. Under these circumstances, the said decision is of no help to the appellant.

8. No other contention is raised.

9. In the result, the appeal is meritless and therefore, dismissed.

***(JAYANT PATEL, J.)***

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